

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/12/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000716

FILED: _____

STATE OF ARIZONA

CARRIE M COLE

v.

DERIK JOSIAH VANCE

DERIK JOSIAH VANCE
3739 E TOPEKA
PHOENIX AZ 85050-0000

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #R0118318

Charge: A. SPEED GREATER THAN REASONABLE AND PRUDENT

DOB: 12/31/80

DOC: 05/23/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/12/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000716

Appellant has requested Oral Argument in this matter; however, this Court does not believe that oral argument would be helpful.

IT IS THEREFORE ORDERED denying the Request for Oral Argument.

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

The first issue raised by Appellant concerns the sufficiency of the evidence establishing his identity. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.² If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

² *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

03/12/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000716

action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

The trial court heard testimony that the driver in the photograph resembled Appellant. Though Appellant cross-examined the State's witness arguing that only the chin was visible in the photograph. Nevertheless, the witness clearly identified Appellant as the driver of the vehicle.

Appellant also challenges the sufficiency of the service of the Civil Traffic complaint upon him. This issue was fully presented to the trial judge who reviewed the Return of Service Affidavit within the court's file in open court with Appellant. This Court finds no error.

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment of responsibility and sanctions imposed.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for all further and future proceedings.

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

⁷ Id. At 553, 633 P.2d at 362.